והלכתא שיראי לא צריך שומא –

And the ruling is; silk requires no evaluation

Overview

The גמרא concluded the various discussions and ruled (among others) that concerning the dispute between רבה ורב יוסף whether an assessment needs to be made (prior to the קידושין) when a man is מקדש with שוה כסף, the ruling is that when he is מקדש her with שיראי an assessment is not necessary (as long as it turns out to be either a שוה פרוטה or the amount he claimed it to be). תוספות will discuss the necessity and the wording of this ruling.

תוספות asks:

ואם תאמר אמאי איצטריך לפסוק כרבה לגבי רב יוסף –

And if you will say; why is it necessary to rule like רבה against רב יוסף?

דהא בבבא בתרא (דף קמג,ב) פסקינן הלכתא כרבה[1] בר משדה ענין ומחצה[2] –

For in בבא בתרא מסכת the גמרא **decided** that **the ruling is** always **according to רבה** when he disputes רב יוסף, **except** for the three disputes of **שדה ענין ומחצה.** The question is since it is a universal rule that the הלכה is כרבה; why mention it here again!

תוספות offers an answer:

ויש מפרשים דהיינו דוקא במילי דבבא בתרא –

And some explain that this ruling of הלכתא כרבה **is only** concerning the **issues** mentioned in **בבא בתרא** מסכת**;** however concerning disputes in other areas there is no universal rule. Therefore it was necessary to mention here that the הלכה is כרבה that שיראי אין צריכין שומא.

תוספות disagrees with this answer:

ולא נהירא דעל כרחך בכולי גמרא הלכתא כרבה כדמוכח פרק מי שאחזו (גיטין דף עד,ב) –

And this answer **is not true for perforce the הלכה is like רבה in the entire גמרא as it is evident** from **פרק מי שאחזו**[3] **-**

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[1] In our text the גמרא states in (קיד,ב, קמג,ב) ב"ב that והלכתא כוותיה דרב יוסף בשדה ענין ומחצה. This indicates, however that in other cases (where רבה disputes him) the הלכה is not כרב יוסף (but according to רבה).

[2] שדה in ב"ב יב,ב discusses the rights of a בר מצרא (neighbor) who is an heir; ענין on קיד,א discusses that one may retract from a קנין if they are עסוקין באותו ענין; and מחצה on קמג,א is concerning the division of an inheritance between the wife and the children עי"ש.

[3] The גמרא cites there a מחלוקת between רשב"ג and the חכמים. A man said to his wife, here is your גט with the stipulation that you return my cloak to me. The cloak was lost (before she could return it to him). רשב"ג

גבי ההוא דאמר ליה לאריסיה כולא עלמא דלו תלתא ושקלו ריבעא כולי –

Concerning that person who said to his sharecropper, 'everyone irrigates the fields **three** times a year **and receive** for their payment (only) **a fourth** of the crop, **etc.** You will irrigate four times and receive a third of the crops'.[4]

וקאמר[5] ותסברא דרבה כרבן שמעון בן גמליאל והא קיימא לן הלכתא כרבה –

And the גמרא **responded; 'and can you think so; that רבה is in accordance with רשב"ג! But it is established that the ruling is according to רבה -**

ובהא קיימא לן אין הלכה כרבן שמעון בן גמליאל –

And in this case of the גט **it is established that the ruling is not according to רשב"ג'** but rather like the רבנן. Therefore we cannot say that the rulings of רבה ורשב"ג coincide, for that would contradict the two קיי"ל. This concludes the citation of the גמרא in גיטין. Now תוספות concludes his proof:

משמע מדקאמר והא קיימא לן הלכתא כרבה[6] משמע דבכולי גמרא הלכתא כוותיה –

It is apparent since the גמרא **states** categorically '**but we have established that the ruling is according to רבה', this indicates that the ruling is like רבה in the entire גמרא,** not only in [7]ב"ב, as this יש מפרשים insisted.

תוספות offers a solution in the defense of the יש מפרשים:

ושמא יש לדחות דהתם יש ספרים דגרסי בהא קיימא לן הלכתא כרבה –

And perhaps we can set aside this proof, **for there are texts there that read 'in this case we have established הלכתא כרבה' -**

דמשמע בהא דוקא ולא בכולי גמרא –

which would indicate that 'in this case' specifically the הלכה is כרבה, **but not in the entire גמרא.**

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maintains she can pay him the price of the cloak and it will be a valid גט. The חכמים disagree and maintain there can be no גט unless she returns the actual cloak.

[4] When the time came to irrigate it the fourth time, it rained sufficiently that the אריס did not need to irrigate the field. רב יוסף maintained that since he did not irrigate the field a fourth time, therefore he is not entitled to a third of the crops, but rather only to a fourth like all other אריסים. However רבה maintains that since the fourth irrigation was done (albeit through the rain) he receives a third of the crops.

[5] Initially the גמרא attempted to compare the case of the אריס to the case of the גט. Concerning the גט the חכמים rule that since the agreement was to return the cloak and she did not, there is no גט; similarly רב יוסף maintains that since they agreed that he would irrigate four times and he did not; he receives only a fourth. רבה however follows רשב"ג and they both maintain that we need not be so particular, in both cases the agreement was met; the husband received the value of the cloak and the field was properly irrigated.

[6] Concerning רשב"ג the גמרא states that קיי"ל דאין הלכה כרשב"ג <u>ובהא</u> indicating that the קיי"ל is only in this case; however concerning רבה the גמרא states והא קיי"ל דהלכתא כרבה (without a 'בהא') indicating that universally the הלכה is כרבה.

[7] The מחלוקת concerning the אריס is not cited in ב"ב (only in גיטין).

In summation: According to the י"מ the הלכה is כרבה against רב יוסף only in their disputes in ב"ב. It was therefore necessary here (in קידושין [and in גיטין]) for the גמרא to rule like רבה against רב יוסף.

תוספות has an additional question:

מיהו קשיא אמאי לא קאמר בהדיא הלכתא כוותיה דרבה –

However there still **is a difficulty; why did not the גמרא specifically state the הלכה is according to רבה** (without mentioning שומא צריך לא שיראי) -

כדאמר הלכה כרבי אלעזר והלכתא כרבא אמר רב נחמן –

As the גמרא **states the הלכה is like ר"א and the הלכה is like ר"נ רבא אמר.** Here however the גמרא chose to say שומא צריכין אין שיראי הלכתא; stating the ruling but not mentioning the name of רבה as it did by the others (where it did not mention the ruling).

תוספות answers:

ואומר רבינו תם דאתא לאשמועינן דדוקא שיראי הוא דלא צריכי שומא[8] –

And the ר"ת answered that (by stating שיראי אין צריכין שומא and not mentioning רבה) the גמרא **is coming to inform us that only שיראי do not require an evaluation -**

לפי ששומתן ידוע קצת ואין רגילין לטעות בו כל כך –

For their evaluation is slightly known and it is not usual to make a drastic mistake in its value; therefore שומא is not necessary **-**

אבל שאר דברים כגון אבנים טובות ומרגליות שיש שאינם טובות אלא מעט –

However other items such as precious stones and pearls, where there are those gemstones **which are not that good, but rather** they are of **little** worth -

ורגילים לטעות בהרבה יותר משוויים צריכי שומא משום דלא סמכה דעתה–

And it is usual to mistake them to be worth much more than their value, in those cases **שומא is required, for** the woman **is not placing her trust** as to its true value.[9]

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[8] It would seem that the ר"ת is answering both questions. We can assume that רבה ורב יוסף are arguing in all cases; by שיראי and by אב"ט. It is necessary to teach us that the הלכה is שיראי צריכי שומא לא for that does not necessarily mean that the הלכה is כרבה. It is only by שיראי that שומא is not required, since its שומא is known; however by אבנים טובות where the value is not known, שומא is required (in a case of אמר חמשין ושוי חמשין) for there the הלכה is like רב יוסף and not like רבה. [The actual מחלוקת between רבה ורב יוסף was by שיראי; therefore the גמרא could not have added a fourth case where the הלכה is כרב יוסף.] Alternately; ר"ת may be saying that רבה maintained שומא צריכי לא only by שיראי and not by אב"ט. Had the גמרא said הלכה כרבה (or not said anything); we may have mistakenly assumed that רבה maintains שומא צריכי לא even by אב"ט. Therefore the גמרא needed to limit the scope of this הלכה to שיראי. See 'Thinking it over' # 2.

[9] When the woman receives the אבן טוב she is unsure whether it is as valuable as it looks or perhaps it is of little value, therefore שומא is required (for if she finds out that it is of lesser value than what she estimated, it will be קידושי טעות, or if she is not sure that it is worth what he is telling her she will not commit herself).

תוספות concludes based on the פירוש ר"ת:

ולפיכך נהגו העולם לקדש בטבעת שאין בה אבן –

And therefore there is a universal custom to perform **the קידושין with a ring that has no stone set in it.**[10]

תוספות resolves an anticipated difficulty:

והא דאמר לקמן בפרק שני (דף מח,ב) שהוסיף לה נופך[11] משלו[12] יש לומר ששמו אותו –

And that which the גמרא **stated later in the second פרק, that he added a נופך stone of his;** indicating that she is מקדושת with the stone. This is not a difficulty, for **we can say that it was evaluated** before he gave it to her.

תוספות offers an alternate explanation for the גמרא of נופך:

אי נמי ההוא נופך כעין שיראי שידוע שוויו קצת[13] –

Or you may **also** say; **that נופך is similar to שיראי** in the sense **that its value is somewhat known,** and there is סמיכות דעת.

תוספות anticipates an additional difficulty:

וההוא גברא דקדש באבנא דכוחלא (לקמן דף יב,א) –

And concerning **that person who was מקדש** a woman **with a black marble stone -**

והוה רב חסדא משער אי אית ביה שוה פרוטה –

And רב חסדא was estimating its value (after the קידושין) **if it is worth a פרוטה.** This indicates that if it were worth a פרוטה she would be מקודשת with an אבן טוב; in contradiction to the ר"ת!

תוספות responds:

אבנא דכוחלא לא הוי כשאר אבנים טובות[14] אלא כעין אבני שיש –

The אבנא דכוחלא are not like other precious stones but rather they are similar to marble stones (which are building stones and not jewelry) **-**

כדאשכחנא פרק ה' דסוכה (דף נא,ב) בהורדוס דבניה לבית המקדש –

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[10] If there were a precious stone set in the ring it would require a שומא for the קידושין to be valid. It is apparent that the value of the (gold) ring is fairly known.

[11] נופך is translated by some to mean an emerald, others refer to it as a carbuncle. נופך is from the אבני החושן.

[12] The case there is about a woman who gave gold to a craftsman to make rings for her, and as payment she agreed to become מקודשת to him. According to the מ"ד of ישנו לשכירות מתחלה ועד סוף she cannot become מקודשת to him through this payment but the גמרא says that nevertheless she is מקודשת in the instance where the craftsman added a נופך (which belonged to him) to the jewelry that he made for her. She becomes מקודשת only with this נופך.

[13] It would seem that the נופך was not such an expensive stone (or it was very popular).

[14] This would (seemingly) be obvious from the fact that רב חסדא had to estimate if it is worth a שוה פרוטה.

As we find in the **fifth** פרק **of** סוכה מסכת concerning **הורדוס that he built the ביהמ"ק -**

באבני דשישא וכוחלא ומרמרא –

with stones of beige, black, and white marble; indicating that אבנא דכוחלא are stones for building and not jewelry.

In Summation: The ר"ת explains that it was necessary to state that in this מחלוקת the ruling is that only שיראי לא בעי שומא; however אבנים טובות require שומא. Had the גמרא not stated it so, we may have mistakenly assumed that in all cases אין צריכין שומא. The implication is that one should not be מקדש with a precious stone.

תוספות offers an alternate solution why it was necessary to rule like רבה:

ויש מפרשים משום הכי איצטריך לפסוק כרבה לגבי רב יוסף –

And others explain the reason it was necessary to rule like רבה against רב יוסף, is -

משום דרב יוסף הביא לעיל (דף ח,א) כמה ראיות לדבריו –

because רב יוסף previously brought various proofs to his opinion. Therefore the גמרא rules that despite those proofs the הלכה is like רבה.

The י"מ answer the second question why the גמרא did not simply state the הלכה is like רבה:

עוד יש מפרשים משום הכי לא קאמר הלכתא כרבה –

In addition there are those who explain the reason the גמרא **did not state הלכתא כרבה** (instead of saying שיראי אין צריכין שומא) is in order -

דלא תימא דהיינו רבה דאיכא דאמרי דבכל דהו[15] לא צריכי שומא –

That you should not mistakenly **assume that** we are **referring** to the **רבה of the איכא דאמרי** who maintains that (only) if the man said **כל דהו** then שומא **is not required -**

אבל אמר לה חמשין ושוי חמשין בעי שומא[16] –

However when the man **said** they are worth **fifty** זוז **and they were worth fifty** זוז then perhaps **שומא is required** for she is not דעת סומך -

לפיכך פסק דבשום ענין לא בעי שומא[17] –

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[15] This means he told the woman I want to be מקדש you with a minimum amount. The object with which he was מקדש her had the minimum amount of a פרוטה. See the גמרא previously א,ח-ב,ז.

[16] See the תוספות that it is apparent from this תוספות ח,א ד"ה מנא on מהרש"א (הארוך) that according to the איכא דאמרי, the מחלוקת between רבה ורב יוסף is only by כל דהו, however by חמשין ושוי חמשין all agree that בעי שומא. For if their מחלוקת is also by חמשין וכו', then even if we thought that הלכתא כרבה is referring to the א"ד, we would still know that שומא is never required even by חמשין, since רבה maintains according to the א"ד that שומא is never required. According to this מהרש"א we are not גורס previously on (ב,ז) that פליגי נמי בכל דהו, but rather פליגי בכל דהו. See 'Thinking it over # 1.

[17] See 'Thinking it over' # 3.

Therefore the גמרא **ruled** and said שיראי לא בעי שומא indicating **that in all circumstances שומא is not required** (even in the case of חמשין ושוי חמשין).

תוספות concludes:

לפי זה הטעם יתיישב הא דאיצטריך לפסוק כרבה –

According to this reasoning (that by saying שיראי לא צריכין שומא the גמרא indicates that this applies even to a case of חמשין ושוי חמשין) **it will also be understood why it was necessary to rule** here **like רבה -**

אף על גב דבכל דוכתא קיימא לן כוותיה[18]:

Even though that we follow him in all places. In this case we are not certain whether we follow רבה of the לישנא קמא or רבה of the איכא דאמרי; by saying שיראי אין צריכין שומא the גמרא teaches that the ruling is like רבה in the לישנא קמא.

Summary

The ruling that לא צריכי שומא applies only to items whose value is fairly known, however שומא is required by certain expensive items such as precious stones, where there can be a great discrepancy in their value. People are therefore מקדש with a ring only, without a stone.

It may be necessary to teach us that the הלכה is כרבה against רב יוסף when the dispute is not in בבא בתרא, or when רב יוסף has proof for his view. In our case it may have been necessary to teach שיראי לא צריכי שומא to rule like the לישנא קמא that the מחלוקת is [also] (even) by חמשין ושוי חמשין.

Thinking it over

1. According to the איכא דאמרי what would רבה maintain in a case of חמשין ושוי חמשין; is שומא required or not?[19]

2. If a man was מקדש with אבנים טובות and said בכל דהו; is שומא required or not?[20]

3. How do we derive from שיראי לא צריך שומא that it is (also) referring to a case of חמשין וכו'[21] and not only to a case of כל דהו?

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[18] The גמרא is actually teaching us that the לישנא קמא is the correct version of their dispute; meaning that רבה maintains אין צריכין שומא even in a case of חמשין ושוי חמשין.

[19] See אמ"ה footnote # 76.

[20] See נח"מ בד"ה ואומר ובד"ה ואפשר.

[21] See footnote # 17.